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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D., 1953

No. 209

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY,**

Petitioner,

vs.

**ARCHIE C. STUDE, WILLIAM LUMPKIN and
POTTAWATTAMIE COUNTY, IOWA,**

Respondents.

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY,**

Petitioner,

vs.

ARCHIE C. STUDE,

Respondent.

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY,**

Petitioner,

vs.

ARCHIE C. STUDE and WILLIAM LUMPKIN,

Respondents.

PETITION FOR REHEARING

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INDEX

	PAGE
Petition for Rehearing.....	1
Brief Points in Support of Petition for Rehearing:	
I-A	4
I-B	4
II	5
III	5
Argument:	
I-A	6
District Courts of the United States have jurisdiction only over "cases in law and equity." Such courts cannot entertain jurisdiction in purely administrative proceedings prescribed by state law. The statutes of the United States restrict the jurisdiction of the District Courts to "civil action." It is, therefore, manifest that by its decision that the Iowa eminent domain law prescribes an administrative proceeding before the county sheriff, this Court has determined that such proceeding could not have been initiated, in the first instance, in the United States District Court for the Southern District of Iowa.	
I-B	10
Since petitioner was precluded from initiating its condemnation proceeding in the United States District Court, it followed the only procedure available to it; namely, to institute the condemnation proceeding before the state sheriff and then, when that proceeding was complete, to file its complaint in the United States District Court invoking the original jurisdiction of that tribunal. At that time the trial, by commission, required by Iowa law had already been completed and there remained only a trial of the issue of valuation, or damage, by a jury. A full compliance with the provisions of Rule 71A(a) to (g), inclusive, would have involved a useless	

duplication of mere procedural steps prescribed by state law. Since the only relief which the Federal Court could afford was by a jury trial on the issue of valuation, or damages, petitioner's complaint sought the only remedy which the Federal court could grant. It follows that petitioner's complaint was improperly dismissed.

II 12

The dismissal of petitioner's action by the District Court was predicated upon an erroneous and untenable ground. Since this Court has found no jurisdictional basis upon which to sustain such dismissal, the judgments below should be reversed and the case remanded with directions to permit petitioner to file any pertinent amendments necessary to properly bring the controversy before the District Court.

III 14

The *jurisdiction of the United States District Courts* as distinguished from the procedure to be followed in no manner is affected by the adoption of Rule 71A.

Conclusion 15

TABLE OF CASES CITED

Des Moines Water Co. vs. City of Des Moines, 206 Fed. 657 (C.A.8th)	9
Kaw Valley Drainage District vs. Metropolitan Water Co., 186 Fed. 315 (C.A.8th).....	9
Madisonville Traction Co. vs. St. Bernard Mining Co., 196 U.S. 239, 49 L.Ed. 462.....	8
Mississippi & Rum River Boom Co. vs. Patterson, 98 U.S. 403, 25 L.Ed. 206.....	7
Myers vs. C&NW R.R. Co., 118 Iowa 312, 91 N.W. 1076	6
Searl vs. School District, 124 U.S. 197, 31 L.Ed. 415...	8

STATUTES CITED

PAGE

Federal Rules of Civil Procedure:

Rule 15	13
Rule 71A	13
Rule 71A(a) to (g)	4
Rule 71A(a) to (c)	12
Rule 71A(d) to (g)	11
Rule 71A(k)	11
Rule 82	5

Tit. 28, U.S.C.A.:

Section 1332	7
--------------------	---

Constitution of the United States:

Article III, Section 2.....	7
-----------------------------	---

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Respondents.

PETITION FOR REHEARING

Petitioner, Chicago, Rock Island and Pacific Railroad Company, respectfully prays that a rehearing be granted in this cause, that the opinion of the majority of the Court dated January 18, 1954, be withdrawn, and that the cause be restored to the docket for re-argument; and for grounds of such petition states:-

1. The opinion of the majority of the Court, filed January 18, 1954, decides every controlling question of law

presented by the case in accordance with petitioner's contentions but erroneously, we believe, affirms the judgment of the Court of Appeals for the Eighth Circuit.

Thus, the opinion of the majority holds (a) that the Iowa law of eminent domain prescribes a purely administrative procedure for the preliminary determination of damages by commissioners appointed by the sheriff and (b) that petitioner, as condemnor, is under Federal law, the plaintiff in any civil action which may be brought in the United States Courts, notwithstanding that, by state law, the landowner is plaintiff and condemnor is defendant in such action.


These points have been decided in accord with the contentions of petitioner. Since the procedure before the Iowa Sheriff is an administrative proceeding, it manifestly could not have been initiated in a United States District Court in the manner prescribed by Rule 71A, for the jurisdiction of that Court is, by the Constitution of the United States, limited to "cases in law and equity," and by Act of Congress to "civil actions." While the opinion of the majority of this Court states that the question whether petitioner could have instituted its condemnation proceeding "as an original action in the United States District Court for the Southern District of Iowa is not before us," the question, we submit, has been determined by the pronouncement of this Court that Iowa law prescribes a purely administrative proceeding before the Sheriff.

2. The opinion of the majority of the Court filed January 18, 1954, affirms the judgment dismissing petitioner's complaint not because of lack of jurisdiction in the District Court, but solely because of non-compliance with the provisions of Rule 71A. Had the District Court dismissed the action on the ground that petitioner's complaint did not

show compliance with Rule 71A, petitioner could and would have sought leave to amend its complaint so as to comply with such procedural rule. The opinion, however, sustains the judgment of dismissal without giving petitioner an opportunity to comply with procedural rules. If petitioner failed to state its cause of action in accordance with the requirements of Rule 71A but did state a cause of action within the jurisdiction of the District Court, the judgment of the courts below should be reversed and the cause remanded with directions to permit petitioner to amend its complaint.

3. The opinion of the majority of the Court filed January 18, 1954, has erroneously, we believe, affirmed a judgment of dismissal based upon a lack of jurisdiction in the United States District Court, solely on the ground of a failure to comply with the provisions of Rule 71A. Petitioner's complaint did comply with all pertinent requirements of Rule 71A, and it was not subject to dismissal upon the grounds stated in the opinion of the majority of this Court.

In support of this petition for rehearing, petitioner submits the following authorities and argument.



BRIEF POINTS IN SUPPORT OF PETITION FOR REHEARING

I.

A.

District Courts of the United States have jurisdiction only over "cases in law and equity." Such courts cannot entertain jurisdiction in purely administrative proceedings prescribed by state law. The statutes of the United States restrict the jurisdiction of the District Courts to "civil actions." It is, therefore, manifest that by its decision that the Iowa eminent domain law prescribes an administrative proceeding before the county sheriff, this Court has determined that such proceeding could not have been initiated, in the first instance, in the United States District Court for the Southern District of Iowa.

Constitution of the United States, Article III, Section 2.

Title 28, Section 1332, U.S.C.A.

B.

Since petitioner was precluded from initiating its condemnation proceeding in the United States District Court, it followed the only procedure available to it; namely, to institute the condemnation proceeding before the state sheriff and then, when that proceeding was complete, to file its complaint in the United States District Court invoking the original jurisdiction of that tribunal. At that time the trial, *by commission*, required by Iowa law had already been completed and there remained only a trial of the issue of valuation, or damage, by a jury. A full compliance with the provisions of Rule 71A(a) to (g), inclu-

sive, would have involved a useless duplication of mere procedural steps prescribed by state law. Since the only relief which the Federal court could afford was by a jury trial on the issue of valuation, or damages, petitioner's complaint sought the only remedy which the Federal court could grant. It follows that petitioner's complaint was improperly dismissed.

II.

The dismissal of petitioner's action by the District Court was predicated upon an erroneous and untenable ground. Since this Court has found no jurisdictional basis upon which to sustain such dismissal, the judgments below should be reversed and the case remanded with directions to permit petitioner to file any pertinent amendments necessary to properly bring the controversy before the District Court.

Rule 15, Federal Rules Civil Procedure.

III.

The jurisdiction of the United States District Courts as distinguished from the procedure to be followed in no manner is affected by the adoption of Rule 71A.

Constitution of the United States, Article III, Section 2.

Rule 82, Federal Rules of Civil Procedure.

ARGUMENT

I

A.

The opinion of a majority of the Court on its face has not decided whether petitioner might have instituted its condemnation proceeding initially in the United States District Court in accordance with the provisions of Rule 71A, Federal Rules of Civil Procedure. The opinion merely says that such question "is not before us," but tacitly assumes that petitioner's proceeding might properly have been started in the District Court.

The majority opinion of the Court states:

"The proceeding before the sheriff is administrative until the appeal has been taken to the district court of the county. Then the proceeding becomes a civil action pending before 'those exercising judicial functions' for the purpose of reviewing the question of damages. *Myers v. Chicago & N.W. R. Co.*, 118 Iowa 312, 315-316, 91 N.W. 1076, 1078. When the proceeding has reached the stage of a perfected appeal and the jurisdiction of the state district court is invoked, it then becomes in its nature a civil action and subject to removal by the defendant to the United States District Court. *Boom Co. v. Patterson*, 98 U.S. 403, 407."

The dissenting opinion of Mr. Justice Frankfurter states that the railroad "was unquestionably entitled to do (so) since there was diversity of citizenship, *Madisonville Traction Co. v. Mining Co.*, 196 U.S. 239."

It is apparent that we have signally failed to make our position plain to the members of this Court. From the outset of this proceeding, we have contended that, since the

eminent domain proceeding prescribed by the Iowa statutes is purely administrative, and not a "civil action," such administrative proceeding is not within the jurisdiction of the District Courts of the United States. This question has been ignored, both in the majority and dissenting opinions, and we submit that it is of controlling importance. All members of the Court agree that the Iowa eminent domain proceeding before the sheriff is an administrative inquest.

Article III, Section 2, United States Constitution, provides:

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, of which shall be made, under their authority; * * * to controversies between citizens of different states."

The original jurisdiction of United States District Courts is prescribed by Title 28, Section 1332, U.S.C.A., and is limited to "civil actions."

Having decided that the eminent domain proceeding under Iowa law is administrative in character, we think this Court has, of necessity, decided that the administrative proceeding could not have been initially instituted in the United States District Court. This is true because the proceeding is not judicial in character—not a "case in law or equity."

The distinction between an administrative proceeding before a board, a commission, or a tribunal, and a "civil action" triable in the courts has always heretofore been recognized by this Court in eminent domain cases. The first case in which it was recognized was the early decision of *Mississippi & Rum River Boom Co. v. Patterson*, 98 U.S.

403, 25 L.Ed. 462, in which Mr. Justice Field in speaking for this Court said:

"The proceeding in the present case before the commissioners appointed to appraise the land was in the nature of an inquest to ascertain its value, and not a suit at law in the ordinary sense of those terms. But when it was transferred to the District Court by appeal from the Award of the commissioners, it took, under the statute of the State, the form of a suit at law, and was thenceforth subject to its ordinary rules and incidents. The point in issue was the compensation to be made to the owner of the land; in other words, the value of the property taken."

This rule has been consistently followed by this Court. In *Searl v. School District*, 124 U.S. 197, 31 L.Ed. 415, it is held that a proceeding under the state law of eminent domain in the state courts, before judicial officers was a "judicial action" and, therefore, could be instituted in the first instance in an appropriate United States District Court. In *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U.S. 239, 49 L.Ed. 462, the writer of the opinion took great pains to point out that, under Kentucky law, eminent domain cases were initiated in the courts of the state and heard before judicial officers. This court speaking by Mr. Justice Harlan there said:

"The case, as made in the county court, was, beyond question, a judicial proceeding; it related to property rights; the parties are corporate citizens of different states; and the value of the matter in dispute exceeded the amount requisite to give jurisdiction to the circuit court. It was, therefore, a proceeding embraced by the very words of the Constitution of the United States, which declares that the "judicial power shall extend . . . to controversies . . . between citizens of different states," as well as by the act of 1887 (Sec. 1),

which declares "that the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of \$2,000, . . . in which there shall be a "controversy between citizens of different states." In view of these explicit provisions it is clear that the proceeding in the county court was a suit or controversy within the meaning both of the Constitution and of the judiciary act. We could not hold otherwise without overruling former decisions of this court."

Prior to the decision in this case the Eighth Circuit Court of Appeals had followed the rule of this Court as shown by the cases of *Des Moines Water Co. v. City of Des Moines*, 206 Fed. 657 (C.A.8th); and *Kaw Valley Drainage District v. Metropolitan Water Co.*, 186 Fed. 315 (C.A.8th).

We cannot believe that this Court intends to hold, for a moment, that an administrative proceeding proscribed by state law may be initiated in a District Court of the United States, when diversity of citizenship and jurisdictional amount exist; yet the majority of the Court seems to have held just this.

We submit, therefore, that the decision of this Court that the proceeding is administrative in character is determinative of the question here presented. Having decided that the proceeding before the Iowa Sheriff is a mere administrative inquest, it necessarily follows that such proceeding was not within the jurisdiction of the United States District Court, and that petitioner was necessarily confined to state procedure at the inception of its eminent domain proceeding. This is of controlling importance because, if petitioner was precluded from initiating its

condemnation proceeding in the United States District Court, then the procedure to be followed under Rule 71A when the case was brought in the United States District Court would necessarily have to take into account what had transpired in the state administrative tribunal. The allegations to be included in a complaint in the Federal Court would necessarily be dependent on the remedy which that court could afford.

B.

In the foregoing division we have pointed out that petitioner filed its complaint in the United States District Court for Southern Iowa at the earliest permissible time. The state administrative procedure was complete, and, with respect to the Stude property, petitioner was in possession of the land by virtue of the proceedings had under state law. It was faced with an exorbitant and excessive award of damages. The only question left for determination in a civil action was the amount of damages to be paid. The only relief which it could receive at the hands of any court, either state or Federal, was a determination of the amount of its liability. Under Iowa law, which was controlling on the rights of the parties, that was the only justiciable issue presented.

Petitioner included in its complaint as required by Rule 71A(c)(2) a short and plain statement of the authority for taking the land, the use for which the property was to be taken, a description of the property owned by defendant, a description of the property taken, and a designation of owner and tenant, as defendants. Petitioner's complaint included allegations with respect to the administrative steps taken and the completion of that procedure. The relief sought was that the damages be fixed and that plaintiff have such further relief as may be just and proper.

No occasion existed for petitioner to comply with the provisions of Rule 71A(d) to (g). Compliance with those provisions would have been a useless gesture. Under Rule 71A(k) it was necessary that state law be followed on trial of the issue of compensation. The trial by commission prescribed by state law had already taken place. Surely petitioner was not required to disregard the state administration proceeding which was, at the outset, its sole and only remedy, and have the damages again determined by a commission in the United States District Court. Yet the majority opinion requires exactly this. The only relief petitioner desired and the only relief which the court could grant was a determination of the amount of damages. Petitioner's complaint, therefore, simply asked the court to grant it such relief. We submit that viewed in this light, petitioner's complaint makes sense, and that to have attempted any other means of complying with the provisions of Rule 71A would merely have obscured the issue and would have served no useful purpose.

Petitioner did serve a notice of appeal from the award made by sheriff's commissioners, but that was merely a compliance with the requirements of the state administrative procedure. The notice of appeal was essential under state law to convert the proceeding into a "civil action." Incidentally, it is to be noted that the notice of appeal did not recite that the appeal was taken to the United States District Court; it recited merely that the appeal would be docketed there on or before a day certain. Furthermore, it is to be noted that petitioner was named as plaintiff. Plaintiff was condemnor, but it was not designated as defendant as required by the state statute. If the proceeding in the United States District Court was merely an appeal to that tribunal from the award of sheriff's com-

missioners, was not the notice of appeal itself sufficient process to give the court jurisdiction? Petitioner caused a summons to be issued and served by the Marshal on all interested parties.

In short, petitioner's complaint complied with every jurisdictional requirement in initiating a civil action in the United States District Court. It stated all essential allegations required by Rule 71A(a) to (c), inclusive, and it sought the only relief which the court had power to grant. Petitioner's complaint, therefore, clearly stated a cause of action. True it is that that cause of action arose by virtue of rights granted by the state law of eminent domain. The very right to resort to the court at all under Iowa law was dependent upon a prior administrative proceeding before the county sheriff.

Iowa law was the sole authority for the proceeding. The jurisdiction of the United States District Court was, we submit, properly invoked. The majority opinion of this Court does not intimate that the complaint was properly dismissed because petitioner had filed its administrative proceeding before the sheriff. It follows, therefore, that the judgment of the District Court dismissing petitioner's complaint on that sole ground was erroneous and the judgment of the Court of Appeals was equally erroneous. We submit that under any view of the case, petitioner's complaint was sufficient to invoke the jurisdiction of the United States District Court and no reason exists for denying to petitioner the right to have its case there tried.

II.

As we have heretofore pointed out, the District Court for Southern Iowa sustained respondents' motion to dismiss the action on the sole ground that by commencing the

administrative proceeding before the Pottawattamie County Sheriff, petitioner thereby elected to proceed exclusively before state tribunals, and could not, when the case became a civil action, invoke Federal jurisdiction. It is significant that this court, while it has affirmed the judgment of the two courts below, has predicated such affirmance upon petitioner's failure to literally comply with the requirements of Rule 71A Federal Rules of Civil Procedure. The majority opinion does not point out any *lack of jurisdictional allegations* with respect to the complaint; it merely sustains the judgments below upon entirely different grounds.

Had Judge Riley's ruling been predicated upon any insufficiency of the allegations of our complaint other than jurisdictional allegations, petitioner could and would have supplied the lack by amendment. Obviously in view of the opinion filed by Judge Riley, the complaint was not subject to amendment, because, under his view, the mere fact that the administrative proceeding had been started before the County Sheriff barred petitioner from his court. A majority of this Court now holds that petitioner's complaint was properly dismissed because the allegations of the complaint would not sufficiently comply with Rule 71A.

We submit that petitioner's complaint contained all essential jurisdictional allegations and that if the case stated by the complaint was within the jurisdiction of the District Court, then this court should reverse the judgments of the courts below and remand the case with directions to permit petitioner to amend its complaint. Such procedure is in accord with the privilege universally granted to a plaintiff who through inadvertence fails to fully plead the facts of his case, but who has properly invoked the jurisdiction of the court. Such procedure would be in accord with the Federal Rules of Civil Procedure, and particularly Rule 15.

We believe that this is a proper case for application of such rule.

III.

The majority opinion of the Court points out that:

"petitioner's right to take the land and the ensuing right (of the owner) to damages here spring from the exercise of the power of eminent domain. The petitioner here seems to ignore the means by which it obtained the land and seeks to review only the question of damages. It may not separate the question of damages and try it apart from the substantive right from which the claim for damages arose. Nor can it be said that petitioner has fully exercised its power of eminent domain, leaving nothing to be determined but the question of damages."

We are not sure that we fully understand the implications of the statement quoted above, but, as we understand it, the Court holds that the determination of damages is but a part of the whole eminent domain proceeding and that the administrative proceeding to acquire rights under eminent domain cannot be separated from the procedural requirements for determining damages. We may concede that this would be true if the condemnation proceeding were governed by a federal law which conferred the right of eminent domain upon a particular governmental agency or a public service corporation and prescribed the method to be followed to procure such right.

In the case at bar, however, the state of Iowa, by its legislature, has prescribed an administrative proceeding for the taking of the property and securing to the condemnor its possession. That proceeding, in the event either party thereto be aggrieved by the amount of damages awarded, may be converted into a civil action "triable by ordinary proceedings." The administrative proceeding is

not within the jurisdiction of a United States Court. The civil action for determination of damages is a "civil action," and we can perceive no obstacle which will prevent a non-resident condemnor from commencing that civil action in a District Court of the United States when diversity of citizenship and jurisdictional amount are present.

It seems to us quite plain that Rule 71A, being a mere procedural rule promulgated by order of this Court, cannot broaden the jurisdiction of the District Courts of the United States. Administrative proceedings are neither "civil actions" nor "cases in law or equity" under the Constitution of the United States.

The quoted portion of the majority opinion which we have set forth above, we believe, disregards the essential provisions of the Iowa law on the subject of eminent domain. If petitioner can be said to have attempted a separation of the question of damages apart from the substantive right from which the claim for damages arose, it is simply because the state statutes have created that separation, making the one the subject of an administrative proceeding, while the other may be pursued in a civil action.

CONCLUSION

A reading of the opinions of this Court indicates that what we regard as the controlling question has been disregarded. It is elementary and fundamental that an administrative proceeding before state officers prescribed by statute is not the subject of a civil action within the meaning of Title 28, Sec. 1332, U.S.C.A. If we are correct in this statement, it follows that the only procedure open to petitioner when it inaugurated its condemnation proceeding was to follow the Iowa law and institute the administrative action which that law prescribed. Having taken that

step and being aggrieved by the award of damages returned by sheriff's commissioners, it was given by state law the right to have the amount of damages determined in a "civil action." These rights were all creatures of state law; but when the State of Iowa prescribed a "civil action" for the determination of the amount of damages, petitioner, by reason of diversity of citizenship and jurisdictional amount, was entitled to institute that "civil action" in the District Court of the United States. If there was a separation of administrative and judicial functions at different stages of the same proceeding, it was simply due to the requirements of state law.

We submit that petitioner's complaint as filed in the United States District Court was sufficient to invoke Federal jurisdiction; that since the administrative proceeding—the trial of the issue of damages by commission—had already taken place in the state proceeding, the only issue before the court was that of damages. If there be any defect or insufficiency in petitioner's complaint, it was not a jurisdictional defect, but one which was subject to correction by amendment.

We earnestly urge that petitioner is entitled to try this case, and its companion cases, in the United States District Court, and we respectfully ask that a rehearing of this cause be granted.

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CERTIFICATE OF COUNSEL

The undersigned counsel for petitioner does hereby certify that the above and foregoing petition for rehearing is presented in good faith and not for delay, and that I believe that the same merits the careful consideration of the Court.

A. B. HOWLAND

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